

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

SAMUEL DANIELS,

Petitioner,

v.

No. 19-cv-0176 JCH/SMV

MARK GALLEGOS,

Respondent.

ORDER GRANTING LEAVE TO PROCEED
PURSUANT TO 28 U.S.C. § 1915(b)
AND TO MAKE PAYMENTS OR SHOW CAUSE

THIS MATTER is before the Court on Petitioner Samuel Daniels' Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 [Doc. 2] and Petitioner's Second Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 [Doc. 4]. Petitioner filed his first Prisoner's Motion and Affidavit on March 4, 2019. [Doc. 2]. Petitioner's Motion was not signed, and the attached inmate account statement indicated that he had sufficient funds in his account to pay the \$5 filing fee for this proceeding. On April 5, 2019, the Court entered an Order to Cure Deficiencies, ordering Petitioner to submit a signed application to proceed under § 1915 and to explain why he is unable to pay the \$5 filing fee despite the \$142.02 balance in his inmate account. [Doc. 3] at 2.

In response to the Order to Cure Deficiency, Petitioner filed his second Prisoner's Motion and Affidavit on April 12, 2019. [Doc. 4]. The second Motion is signed under penalty of perjury and states that Petitioner's inmate account has been depleted to \$0. *Id.* at 3. The Court will grant

Petitioner leave to proceed *in forma pauperis* under § 1915. However, because Petitioner's filings indicate that he occasionally receives money from outside sources, the Court will still require him to pay the \$5 filing fee. See *Baker v. Suthers*, 9 F. App'x 947, 949 (10th Cir. 2001) ("[W]hen a prisoner has the means to pay an initial partial filing fee and instead spends his money on amenities at the prison canteen or commissary, he should not be excused for failing to pay the initial partial filing fee."). Petitioner will be ordered to make monthly payments of 20% of the preceding month's income credited to his account until the \$5 filing fee is paid in full or show cause why the designated payments should be excused.

IT IS THEREFORE ORDERED that Petitioner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 [Doc. 2] and Petitioner's Second Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 [Doc. 4] are **GRANTED**.

IT IS FURTHER ORDERED that Petitioner make monthly payments of 20% of the preceding month's income credited to his inmate account until the \$5 filing fee is paid in full or show cause why the designated payments should be excused.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge